IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY EIGHTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 13646 of 2004

Between:

1. P.Srinivasa Reddy S/o. P.Chinna Venkata Subba Reddy
   R/o. Cherukurherla Village, Midthur Mandal, Kurnool District.
2. P.Narayana Reddy P.Subba Reddy
   R/o. Cherukurherla Village, Midthur Mandal, Kurnool District.

..... PETITIONERS

AND

1. The Assistant Commissioner Endowment Department
   Kurnool District Kurnool.
2. The Endowment Inspector Nandyal, Kurnool District.
3. Sri Bala Brahmmeswara, Vigneswara Swamy Temples, Cherukucherla Village Midthur Mandal, Kurnool District rep. by its chairman Trust Board, P.Venkata Subba Rao.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction or particularly one in the nature of writ of Mandamus, declaring the action of the 3rd respondent in trying to conduct the public auction to lease out Sri Bala Brahmmeswara, Vigneswara Swamy Temples, Cherukucheral Village, Midthur Mandal, Kurnool District situated in Survey No.165 A to an extent of 7.00 acres and Survey No.478 to an extent of 3-85 acres during subsistence of lease in favour of the petitioners ie., upto 2006, pursuant to the public action dt 22.5.2003, as illegal, unwarranted, violative of Articles 14,19, and 21 of the Constitution of India consequently direct the respondents not to interfere with the peaceful possession and enjoyment of the said lands by the petitioners during subsistence of the lease period.

Counsel for the Petitioner: MR.K.RATHANGA PANI REDDY

Counsel for the Respondents 1 & 2: GP FOR ENDOWMENTS
Counsel for the Respondent No.3: Mr.V.Venugopal Rao, S.C. for Endowments.

The Court made the following:

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THE HON'BLE MS. JUSTICE G. ROHINI

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W.P.No.13646 of 2004

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ORDER:

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The petitioners claim to be the cultivating tenants in respect of 7 acres and 3 acres 85 cents of the land situated in Sy.No.165A and Sy.No.478 respectively of Cherukucherla Village, Midthur Mandal, Kurnool District, belonging to the 3rd respondent temple. It is stated that they were granted the lease through public auction conducted on 22-05-2003 and that the lease was for a period of 3 years from 2003-04 to 2005-06. It is also stated that pursuant to the lease granted in their favour they have been cultivating the lands in question and also paid the first installment of the lease amount for the year 2004-05. While so, there was a change in the Trust Board of the 3rd respondent temple and one P. Venkata Subba Reddy has been appointed as Chairman of the Trust Board in the first week of the July, 2004. It is alleged that the said P. Venkata Subba Reddy started interfering with the possession and the enjoyment of the lessees in respect of the temple lands with a view to induct his own people. It is also alleged that the 3rd respondent proposed to conduct a fresh auction in respect of the leasehold rights of the temple lands and accordingly it was notified in the village by way of Tom Tom that the lands in which the petitioners are in possession as lessees are going to be auctioned shortly. Aggrieved by the said action this writ petition is filed contending that since the lease in their favour is subsisting and is valid up to the year 2006, the action of the 3rd respondent in proposing to conduct a fresh auction is arbitrary and illegal.

On behalf of the 3rd respondent, the Chairman of the Trust Board filed a counter

affidavit stating that the lease documents on which the petitioners are relying upon are brought into the existence by manipulating the records. It is also stated that the alleged auction proceedings dated 22-05-2003 do not contain any names or signatures of the witnesses and even the receipts produced by the petitioners contain several discrepancies and actually they relate to the period prior to the date of auction and thus on the face of it the documents produced by the petitioners are not genuine and do not confer any right on the petitioners. It is alleged that the first petitioner is the

son-in-law of the Ex-Chairman of the Trust Board and the 2nd petitioner is related to the 1st petitioner and all of them have colluded so as to grab the endowed property and created the said documents to show as if the lease was granted in favour of the petitioners. It is also stated that as a matter of fact, the Ex.Chairman, in spite of the notice issued, failed to hand over the relevant record, which also goes to show that the public auction said to have been held on 22-05-2003 was nothing but stage-managed. Thus according to the 3rd respondent the petitioners cannot be granted any relief and the writ petition is liable to be dismissed.

The first respondent-Assistant Commissioner, Endowment Department filed a separate counter affidavit stating that the alleged auction conducted on 22-05-2003 was not in accordance with the instructions and circulars issued by the Commissioner of Endowments and that it was not conducted in the presence of the departmental officer deputed by the first respondent. There was also no prior permission from the first respondent for conducting the auction on 22-05-2003. Therefore, the alleged auction in favour of the petitioners is not valid in law and it cannot be said that there is any relationship of landlord and tenant between the petitioners and the 3rd respondent temple. It is also alleged that the then Managing Trustee of the 3rd respondent temple D. Venkat Reddy colluded with the petitioners and created the lease in favour of the petitioners and therefore there is no valid lease in favour of the petitioners and they are not entitled to enforce any right of tenancy to continue in possession of the lands in question.

The petitioners filed a reply affidavit disputing the version of the respondents 1 and 3 in their counter affidavits and stating that the lease amount paid by them for the year

2003-04 as well as for the year 2004-05 was credited to the temple account and the same is also reflected in the audit report. It was reiterated that the auction was validly conducted on 22-05-2003 wherein several bidders have participated and that the lease was granted in their favour in accordance with law.

I have heard the learned counsel for both the parties and perused the material on record.

The learned counsel for the petitioners vehemently contended that the petitioners who were declared as the highest bidders in the public auction and who have already paid part of the lease amounts as per the conditions of lease and raised the crops in the land in question cannot be deprived of their legitimate rights merely on the ground that the departmental officer was not present in the public auction. The learned counsel contends that the absence of the departmental officer by itself does not invalidate the auction particularly in view of the fact that the lease amounts paid by the petitioners were accepted by the third respondent without raising any objection as to the validity of the lease.

On the other hand, the learned Government Pleader as well as learned Standing Counsel appearing for the third respondent contended that since the alleged lease in favour of the petitioners is not valid in law, it does not confer any right on the petitioners and therefore the respondents are entitled to conduct a fresh public auction. He contends that the said auction is in public interest and cannot be held to be either arbitrary or illegal and therefore the interference of this Court is not warranted.

At the outset, it is to be noted that the allegation of the respondents that the public auction dated 22-05-2003 pleaded by the petitioners was stage-managed and the lease documents in favour of the petitioners as well as the receipts acknowledging the lease amount from them are fabricated by the petitioners in collusion with the then Managing Trustee, being a highly disputed question of fact cannot be investigated into by this Court in exercise of jurisdiction under Article 226 of the

Constitution of India. It is always open to the respondents to work out the appropriate remedy on the basis of the said allegations, but the same cannot be adjudicated upon nor taken into consideration by this Court for the purpose of the relief sought in this writ petition.

However, the respondents further contend that the said auction conducted on 22-05-2003 was not valid since the same was conducted in the absence of the departmental officer as required under the statutory rules.

Rule 12 of the A.P. Charitable & Hindu Religious Institutions & Endowments Lease of Agricultural Lands Rules, 2003 (for short, 'the Rules') provides that the auction shall be conducted by the Executive Officer of the Endowment and if there is no Executive Officer, by the Chairman of the Board of Trustees, and that at every such auction there shall be present such departmental officer as may be deputed by the competent authority who shall oversee the proceedings and ensure that the auction is duly conducted in accordance with the Act and the Rules. Rule 19 of the Rules further provides that any lease granted otherwise than in accordance with the said rules shall be null and void and the person or persons in possession of the land shall be deemed to be an encroacher within the meaning of Section 83 of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987. The explanation to Section 83(1) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 defines the expression 'encroacher' as under :

> ***Explanation:-*** *For the purpose of this Chapter the expression 'encroachers' shall mean any person who unauthorisedly occupy any land or building or space and deemed to include any person who is in occupation of the land or building or space without the approval of the competent authority sanctioning lease or mortgage, or licence and also a person who continues to remain in the land or building or space after the expiry or termination or cancellation of the lease, mortgage or licence in respect thereof granted to him or it."*

In the light of the above legal provisions, even assuming that the auction dated 22-

05-2003 was not valid, the petitioner shall be deemed to be an encroacher and they cannot be dispossessed without following the due process of law. It is to be noted that under Section 83 of the Act the Assistant Commissioner having jurisdiction either suo motu or upon a complaint made by the trustee shall report the fact of encroachment together with relevant particulars to the Deputy Commissioner having jurisdiction over the division. On such report, the Deputy Commissioner, if finds that there is a prima facie case of encroachment, shall cause to be served upon the encroacher a notice specifying the particulars of encroachment and calling upon him to show-cause as to why an order requiring him to remove the encroachment should not be made. After considering the objections, if any, of the encroacher and after conducting due enquiry, the Deputy Commissioner, if satisfied that there has been an encroachment, by order require the encroacher to remove the encroachment and deliver possession of the land in question. Sectison 84 of the Act provides for the mode of eviction on failure of removal of the encroachments as directed by the Deputy Commissioner under Section 83 of the Act.

In the case on hand, admittedly, the petitioners are in possession and the lease in their favour, though alleged to be invalid, is subsisting. In the circumstances and in the light of the procedure prescribed under the statutory provisions as noted above, I am of the opinion that even assuming that the lease in favour of the petitioners was granted otherwise than in accordance with the statutory rules and therefore null and void, the respondents are not entitled either to dispossess the petitioners without following the procedure prescribed under the Act or to conduct a fresh auction in respect of the leasehold rights of the land in possession of the petitioners.

Accordingly, the Writ Petition is disposed of with a direction to the respondents not to conduct a fresh auction in respect of the lands in question without recovering the possession of the said land from the petitioners following due process of law. No costs.

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G. ROHINI, J

Dated: -01-2005

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To

1. The Assistant Commissioner Endowment Department
   Kurnool District Kurnool.
2. The Endowment Inspector Nandyal, Kurnool District.
3. The Chairman, Sri Bala Brahmmeswara, Vigneswara Swamy Temples, Cherukucherla Village Midthur Mandal, Kurnool District.

4. Two C.Cs. to the Government Pleader for Endowment, High Court Buildings, Hyderabad. (O.U.T.)

5. Two C.D. copies.